KRISHNAN MOORTHY P MANICKAM

v.

PENGARAH TANAH DAN GALIAN NEGERI JOHOR

HIGH COURT MALAYA, JOHOR BAHRU
DATO' ABDUL MALIK ISHAK J
[ORIGINATING SUMMONS NO: 24-144 OF 1995]
28 JUNE 1996

LAND LAW: *Land acquisition - Gazette notification - Whether Gazette notification defective - Grounds of intended acquisition - Sufficiency - Whether not reflective of requirements of s. 3 Land Acquisition Act 1960 - Land Acquisition Act 1960 ss. 3, 8(1).*

LAND LAW: *Land acquisition - Legality of proceedings - Acquisition of private land by State Authority for a body corporate established under a State Enactment - Whether a valid acquisition - Land Acquisition Act 1960 ss. 3(a), 3(b), 3(c) & 8(1) - Johore State Islamic Economic Development Corporation Enactment 1976 ss. 10, 27(1).*

LAND LAW: *Land acquisition - Private land - State of Johore - Whether decision to acquire unfair - Whether infringing rules of natural justice - Whether owner entitled to a pre-acquisition hearing before Executive Committee of the State - Land Acquisition Act 1960 s. 3 - Johore State Islamic Economic Development Corporation Enactment 1976 s. 10 - Law of the Constitution of 1985 of the State of Johore Art. 58.*

CIVIL PROCEDURE: *Proceedings - Action to declare invalid a State Enactment - Leave of a Judge of the Federal Court - Whether necessary - Effect of non-compliance thereof - Federal Constitution Art.(4).*

INTERPRETATION: *Section 27(1) Johore State Islamic Development Corporation Enactment 1976 - Whether null and void - Whether inconsistent with s. 3 Land Acquisition Act 1960 - Federal Constitution Art. 75.*

The plaintiff is the registered proprietor of a piece of land in Johore held under Certificate of Title No. 2749, Lot 2192, Mukim of Plentong (the land). By a Gazette notification dated 8 July 1993, the State Authority declared its intention to acquire the land pursuant to s. 8 of the Land Acquisition Act 1960 (LAA) for the purpose of "cadangan usahasama membangunkan tanah di Kg. Tasek, Mukim Plentong oleh Perbadanan Kemajuan Ekonomi Islam Negeri Johor". The said Perbadanan Kemajuan Ekonomi Islam Negeri Johor was the Johore State Islamic Economic Development Corporation (JSIEDC), incoporated in 1976 *vide* an Enactment of like name (Enactment No: 1 of 1976).

The plaintiff, dissatisfied with the propriety of the acquisition exercise, sought to challenge the legality of the same. Before the learned Judge, the plaintiff argued, *inter alia,* (i) that Enactment No: 1 of 1976 was inconsistent with the provisions of the LAA and was therefore nullified by Art. 75 of the Federal Constitution; (ii) that the incorporation of JSIEDC under Enactment No: 1 of 1976 did not comply with the provisions of the Incorporation (State Legislatures Competency) Act 1962 (the Competency Act); (iii) that the JSIEDC was therefore illegally incorporated with the result that the Gazette notification was rendered bad in law; (iv) that the words "cadangan usahasama membangunkan tanah di Kg. Tasek, Mukim Plentong oleh JSIEDC" were not descriptive of one or more of the specific purposes spelt out in ss. 3(a) or 3(b) or 3(c) of the LAA, and this was fatal to the acquisition exercise; and (v) that the State Authority's decision to acquire the land was not made with justice and fairness, and this had infringed the rules of natural justice and had also violated the intents of Art. 58 of the Law of the Constitution of 1895 of the State of Johore (the Johore Constitution). These aside, the plaintiff also objected to the award given by the Land Administrator, alleging that it was inadequate and made without considering such factor as the likely increase in the value of the land when put to use by JSIEDC.

Held:

[1] The Gazette notification in Form D dated 8 July 1993 which described the purpose of the intended acquisition of the land was sufficiently worded and squarely falls within the ambit of s. 3(b) of the LAA. The notification is conclusive evidence that the land was needed for the purpose stated therein.

[2] Going by ss. 18 and 19 of Enactment No: 1 of 1976, JSIEDC could clearly enter into a joint venture development of the land. Acquisition of an immovable property by JSIEDC is in tandem with s. 3 of the LAA.

[3] Section 27(1) of Enactment No: 1 of 1976 and s. 3 of the LAA are complementary to one another. There is thus nothing unlawful about the State Authority acquiring the land on behalf of JSIEDC, having hitherto entertained the opinion that that acquisition was beneficial to the economic development of Malaysia particularly JSIEDC. By necessary inference the words "any class of the public" appearing in s. 3(b) of the LAA may be extended to the "economic and social development of the Muslim community" as envisaged in item 12 of the First Schedule of the Competency Act.

[4] The Legislature of the State of Johor had the necessary power to legislate the setting up of JSIEDC. This apart, the challenge on the legality of JSIEDC was inherently defective. Since the challenge was in respect of an Enactment made by a State Legislature, by Art. 4(4) of the Federal Constitution, leave of a Judge of the Federal Court must first be obtained.

This has not been done and the result was that this Court has no power to entertain that challenge. On this ground alone the Originating Summons should be dismissed.

[5] By the proviso to s. 3 of the Competency Act, the special provisions prescribed in the Second Schedule of that Act shall have effect when the incorporation of any body within the State was for the purpose of "agricultural development or housing development or of development of urban or rural areas". JSIEDC, however, was not established for such a purpose but for it "to enter into contracts and to acquire, purchase, take, hold and enjoy movable and immovable property ... and to deal with any movable or immovable property or any interest therein". There was thus no necessity to comply with the proviso to s. 3 of the Act.

[6] The contention that the State Authority had not acted fairly or with justice must fail. The argument that the plaintiff should have been accorded the right to be heard before the Executive Committee (Majlis Mesyuarat Kerajaan) prior to the decision to acquire, is unsustainable. There was no need for such a pre-acquisition hearing as *audi alteram partem* rule does not apply when the Executive Committee decided to acquire the plaintiff's land. There is also no requirement under s. 3 of the LAA that the State Authority must supply the plaintiff with details of the joint venture development as proposed by JSIEDC. Besides, there cannot be "departmental agression" when s. 3 of the LAA is silent in regard to a pre-acquisition inquiry before the Executive Committee.

[7] As to the contention that the Menteri Besar of Johore as chairman of the Executive Committe should not also sit as chairman of JSIEDC, this issue (i.e. of the duality of the Menteri Besar's position) could be avoided by invoking s. 10 of Enactment No: 1 of 1976 which enabled the Menteri Besar to delegate his authority to the appropriate officer of JSIEDC.

[8] The likely increase to the value of the land when put to use by JSIEDC cannot be considered by the Court as it ran counter to s. 3 of the LAA. It is trite that it is the future development value of the land acquired and its realized possibilities that can be taken into account.

[Application dismissed]

Cases referred to:

Lim Cho Hock v. Government of the State of Perak & Ors. [1980] 2 MLJ 148 ***(refd)***

Collector of Land Revenue Kuantan v. Noor Cahaya bte Abdul Majid [1979] 1 MLJ 180 ***(foll)***

Khoo Peng Loong & Ors. v. Superintendent of Land & Surveys, 3rd Division [1966] 2 MLJ 156 ***(foll)***

Stephen Kalong Ningkan v. Tun Abang Haji Openg & Tawi Sli [1967] 1 MLJ 46 ***(foll)***

The City Council of George Town & Anor. v. The Government of The State of Penang & Anor. [1967] 1 MLJ 169 FC ***(foll)***
Yeap Seok Pen v. Government of State of Kelantan [1982] 2 MLJ 202 FC ***(foll)***
Syed Omar bin Abdul Rahman Taha Alsagoff & Anor. v. The Government of the State of Johore [1979] 1 MLJ 49 ***(foll)***
Wijeyesekera v. Festing AIR [1919] PC 155 ***(cit)***
SMT Somavanti & Ors. v. The State of Punjab & Ors. [1963] 2 SCR 774 ***(cit)***
Yew Lean Finance Development (M) Sdn. Bhd. v. Director of Lands & Mines Penang [1977] 2 MLJ 45 ***(refd)***
R v. Ramsgate (Inhabitants) [1827] 6 B & C 712 ***(refd)***
Attorney-General v. Mutual Tontine Westminster Chambers Association Ltd. [1876] 1 Ex D 469 ***(refd)***
Bradlaugh v. Clarke [1883] 8 App. Cas 354 ***(refd)***
Re No: 12 Regent Street, Oxford [1948] Ch. 735 ***(refd)***
Assistant Development Officer, Trombay v. Tayaballi Allibhoy Bohori AIR [1933] Bom. 361 ***(refd)***
Er Boon Yan & Ors. v. The Collector of Land Revenue, Port Dickson [1955] 21 MLJ 134 ***(refd)***
S Kulasingam & Anor. v. Commisioner of Lands, Federal Territory & Ors. [1982] 1 MLJ 204 ***(foll)***
Pengarah Tanah dan Galian, Wilayah Persekutuan v. Sri Lempah Enterprise Sdn. Bhd. [1979] 1 MLJ 135 ***(refd)***
The Kerpan's case; Alor Setar High Court, O.S. No: 24-28-94 ***(not foll)***

Legislation referred to:
Land Acquisition Act 1960, ss. 3(a), (b), (c), (e), 8(1), 8(3), 10, 27(1), 38(1), 68
Incorporation (State Legislatures Competency) Act 1962, ss. 3, 7, 18(1), First Schedule
Federal Constitution Arts. 4, 8, 13, 128
Law of the Constitution of 1895 of the State of Johore, Art 58
Johore State Islamic Economic Development Corporation Enactment 1976, ss. 3, 18, 19, 27(1)
Kelantan Foundation Enactment, 1974 s. 19

Other sources referred to:
Concise History, Prof. Plucknett, 5th Edn., p. 322

For the plaintiff - Arthur Lee Meng Kwang; M/s. Arthur Lee & Co.
For the defendant - Abdul Rashid Daud, SFC

JUDGMENT

Abdul Malik Ishak J:

By Originating Summons the plaintiff sought for the following reliefs (as reflected in encl 2):

(1) A declaration that Warta Kerajaan Negeri Johor No: 1028 dated 5 August 1993 is bad in law, null and void and is of no effect;

(2) Further and/or in the alternative, a declaration that Warta Kerajaan Negeri Johor No: 1028 dated 5 August 1993 was made contrary to Article 58 of Part I of the Law of the Constitution of 1895 of the State of Johore and/or to the established principles of natural justice, *ultra vires* and void;

(3) An order that Warta Kerajaan Negeri Johor No: 1028 dated 5 August 1993 be set aside;

(4) Special damages in the sum of RM11,900.

(5) Such further or other relief as the Court may deem fit to order; and

(6) Costs.

By an affidavit affirmed on 10 March 1995 (encl 3), the plaintiff deposed that he was the registered proprietor of a piece of land held under Certificate of Title No: 2749, Lot 2192, Mukim Plentong, in the district of Johor Bahru measuring 9 acres 3 roods 19 poles ("the land"). The land was said to be within the then municipality limits and now considered within the city limits of Johor Bahru with the category of land use as "agriculture". On a perusal of the document of title to the land, there was an absence of any reference to the category of land use and, consequently, any reference to the land being an agricultural enclave is nothing more than a mere conjecture. It was deposed that the plaintiff purchased the land on 23 December 1989 with the sole purpose of developing it and towards this end the plaintiff saw it fit to incorporate a company known as Ponderosa Heights Sdn. Bhd. on 16 April 1992. It was said that access to the land was through the site of the existing Ponderosa Golf Course which adjoins the land and whose developers had expressed an interest to purchase the land from the plaintiff. On 5 August 1993, the defendant took measures and caused the land to be gazetted for intended acquisition together with several other adjoining lands *vide* Warta Kerajaan Negeri Johor No: 1028 pursuant to s. 8 of the Land Acquisition Act, 1960 (Act 486) ("LAA"). Sections 8(1) of the LAA enacts that:

> When the State Authority decides that any of the lands referred to in s. 7 are needed for any of the purposes referred to in s. 3, a declaration in Form D shall be published in the Gazette.

Indeed Form D that was published in the Gazette bore a significant date and that was 8 July 1993 and this was the date of the intended acquisition which can be seen in exhibit "KA1" of encl. 16. Reverting back to the mainstream of the facts of the case, it was deposed that the defendant knew that the land would fetch a higher market value when it was converted from its present agricultural category and that the Johor Bahru Town and Country Planning Department would not let the land remain idle as an agricultural enclave. Unfortunately, this part of the plaintiff's averment was not supported by an affidavit from the Johor Bahru Town and Country Planning Department and it would remain as a mere conjecture as the defendant would not be in a position to comment on this point and from the affidavit in reply affirmed by

Kamarudin bin Abdullah on 4 March 1996 in encl 16 this point was merely glossed through. It was said that prior to the publication of the Gazette notification in Form D, the developer of the Ponderosa Golf Course had fenced off the regular access route to the land and this caused the plaintiff to speculate that the intended acquisition of the land was meant for the expansion of the golf course. The speculation manifested itself to a certain degree of certainty when the developer's representative in the person of Mr. Quay Chew Hong made an offer to purchase the land, which offer the plaintiff rejected outright. The Gazette notification in Form D described the purpose of the intended acquisition as:

> Cadangan Usahasama Membangunkan Tanah di Kg. Tasek, Mk. Plentong oleh Perbadanan Kemajuan Ekonomi Islam Negeri Johor.
>
> (The proposed joint venture development of the land at Kg. Tasek, Mk. Plentong by the Johore State Islamic Economic Development Corporation).

It was deposed that where a statute confers a power, and in particular the power to deprive the subject of proprietary rights, the Courts will have to confine those people exercising that power to the strict letter of the statute. It was said that the Gazette notification of the intended acquisition of the land did not specify any of the grounds as exemplified in s. 3 of the LAA. It was said that the words "proposed joint venture development of the land" were not reflective of the requirements of s. 3 of the LAA. Flowing from this, it was deposed that Article 58 of the Law of the Constitution of 1895 of the State of Johore ("the Johore Constitution") imposed a duty on the defendant to carry out and exercise its power under all the laws and customs of the State of Johore and particularly, in the instant case, under s. 3 of the LAA with fairness and justice. It was sought to explain that the words "fairness and justice" would mean that the defendant should not entertain in the least degree more sympathy or regard or partiality to the Johore State Islamic Economic Development Corporation ("JSIEDC") or its unidentified joint-venture partners and the defendant's duty would be to –

(a) identity all the persons or corporations for whom the land was being acquired for;

(b) inform the plaintiff as to who the JSIEDC's joint venture partners were;

(c) accord the plaintiff the right to be heard on the needs of the JSIEDC and its unidentified joint venture partners;

(d) accord the plaintiff the right to be heard before making its decision to acquire the land for the JSIEDC and its unidentified joint venture partners.

It was deposed that the defendant has failed to perform the duties as itemised in (a) to (d) to this very day. It was said that JSIEDC is a body corporate established under the Johore State Islamic Economic Development Corporation Enactment, 1976 ("Enactment No: 1 of 1976") with the Menteri Besar of Johor

as its chairman. Of course the duality of position as envisaged, discussed and dissected in *Lim Cho Hook v. Government of the State of Perak & Ors.* [1980] 2 MLJ 148 can be overcome by applying s. 10 of the Enactment No: 1 of 1976 where the Menteri Besar as the chairman of JSIEDC may delegate in writing to any member, officer or servant of JSIEDC the power and authority to carry out on his behalf his duties, powers or functions as he may determine and in so doing the Menteri Besar may give directions as to the manner in which such delegated power or authority is to be exercised and may at any time revoke, modify or increase such delegation. The plaintiff deposed that the Enactment No: 1 of 1976 did not comply with the Incorporation (State Legislatures Competency) Act, 1962 ("Competency Act") for the following reasons:

(1) there was no evidence that arrangements have been made between the State and the Federation in relation to the establishment of the JSIEDC;

(2) there was no provision that the JSIEDC would be subject to the direction of the Minister;

(3) there was no evidence that the requisite three representatives of the Federal Government have been appointed as members of the JSIEDC by the Minister.

I pause here to note that this averment goes to the root of Enactment No: 1 of 1976 and it would surely mark the demise of JSIEDC and from the tenor of the submission of Mr. Arthur Lee Kwang, the learned Counsel for the plaintiff, he was fully aware of the venom of this submission. This observation, as can be noted later, plays a pivotal role as to the outcome of this originating summons.

It was deposed that JSIEDC derived its purported power to acquire immovable property under s. 27(1) of the Enactment No: 1 of 1976 which makes a distinction in respect of its right to acquire State land as opposed to the acquisition of private land. In respect of State land it was said that the purpose may be other than for a public purpose but in respect of private land, the JSIEDC was empowered to acquire only private land for a public purpose. It was deposed that s. 27 (1) of the Enactment No: 1 of 1976 provides that "such declaration shall have effect as if it were a declaration that such land is needed for a public purpose in accordance with any written law" and these words, so it was said, run counter to s. 3 of the LAA thereby rendering it invalid, null and void. It was said that s. 3 of the LAA makes a distinction as to the party for whom the acquisition could be made for. The LAA makes no mention that acquisitions under ss. 3(a) and 3(c) could be made in favour of a third party whereas s. 3(b) is specific in that it could be made in favour of a third party. Consequently, for these reasons it was deposed that s. 27(1) of the Enactment No: 1 of 1976 was inconsistent with s. 3 of the LAA.

The plaintif, so it was said, had incurred the following debts as a result of the intended acquisition of the land:

(i) fees for valuation report and attendance to date	–	RM 8,900
(ii) legal fees incurred up to the present time	–	RM 3,200
		RM12,100

By letter dated 28 July 1994, the plaintiff's solicitors wrote to the Pentadbir Tanah Daerah Johor Bahru conveying the plaintiff's intention to object to the intended acquisition as it was said to have contravened s. 3 of the LAA.

Encik Kamarudin bin Abdullah in his capacity as the Penolong Pengarah, Pejabat Tanah dan Galian, Johore affirmed an affidavit in reply in encl 16 and there he adverted to Form D of the Gazette notification of the intended acquisition of the land which was exhibited as "KAI". He said that the notice of enquiry in Form E under s. 10 of the LAA together with the notices to require evidence in writing in Forms F under s. 11 of the LAA to the plaintiff as the registered proprietor and to Mui Finance Berhad as the mortgagee were issued on 3 May 1994. He deposed that inquiries were held on three occasions, namely: on 13 June 1994, on 14 December 1994 and on 26 May 1995. An award of RM1,717,695 was awarded to the plaintiff and this is reflected in Form G to s. 14 of the LAA as exhibited in "KA3" of encl 16. In due course, on 24 March 1995, the notice of award and an offer of compensation in Form H was served on the plaintiff. Being dissatisfied, the plaintiff filed an objection in Form N under s. 38 (1) of the LAA to the Court for determination. It is pertinent to observe that there were two objections in Form N. One was in regard to the low award which was said not to be commensurate with the market value of the land. The other was the likely increase to the value of the land when put to use by JSIEDC and this cannot certainly be considered by this Court because it runs counter to the First Schedule of s. 3(e) of the LAA. It is now trite law that it is the future potential development value of the land acquired and not its realized possibilities that can be taken into account (*Collector of Land Revenue Kuantan v. Noor Cahaya bte Abdul Majid* [1979] 1 MLJ 180 and *Khoo Peng Loong & Ors. v. Superintendent of Land & Surveys, 3rd Division* [1966] 2 MLJ 156). Be that as it may, Encik Kamarudin bin Abdullah deposed further that the category of the land was not itemised in the document of title and this as I said earlier was a mere conjecture. He deposed that he was not aware that the plaintiff intended to develop the land and neither was he aware that the plaintiff had set up a company called Ponderosa Heights Sdn He too was not aware that the plaintiff's right of access to his own land was through the Ponderosa Golf Course. He denied the contents of para. 3 of the plaintiff's affidavit and averred that the purpose of the acquisition of the land was amply set out in Form D that was dated 8 July 1993. He deposed that the reasons

for the intended acquisition as set out in Form D complied fully with s. 3 of the LAA and, consequently, it was said that the declaration in Form D shall be conclusive evidence that the land was needed for the purpose specified therein. He deposed that the intended acquisition of the land did not run counter to Art. 58 of the Johore Constitution and neither did it conflict with Art. 8(1) and 13 of the Federal Constitution. It was said that under the law the defendant was not required to inform the plaintiff the particulars of the parties that would benefit under the acquisition exercise. It was deposed further that the defendant had complied with the provisions of the LAA and, consequently, the intended acquisition of the land was said to be valid and enforceable in law. It was said that the enquiry proceedings were conducted within the ambit of the rules of natural justice and not in conflict with Article 13 of the Federal Constitution. It was deposed that the Enactment No: 1 of 1976 came into effect on 7 May 1976 and it complied with the Competency Act. Next, Encik Kamarudin bin Abdullah was advised and he believed that s. 3 of the Competency Act gave the power to the Legislature of a State particularly the Johore State to make laws with respect to the incorporation of any person or body within the Johore State falling within the ambit of the First Schedule, item 12 of the Competency Act on economic and social development of the Muslim community that was added on 16 December 1974 *vide* PU(A) 448 which was deemed to have come into force on 1 April 1974. By simple deduction, it was said that since JSIEDC was established under the Enactment No: 1 of 1976 which was enacted by the Legislature of the State of Johore and which came into effect on 7 May 1976 - a date which was clearly after item 12 of the First Schedule to the Competency Act 1962 came into force on 1 April 1974, consequently, it was submitted that the Legislature of the State of Johore had lawfully enacted JSIEDC in so far as to enable it to perform for the "economic and social development of the Muslim community." He deposed further that the acquisition exercise was valid in law and the defendant denied that the plaintiff had incurred financial losses arising from that acquisition. With that he prayed that the originating summons be dismissed with costs.

Only three major issues were ventilated before me and they can conveniently be categorised in the following terms:

(1) Whether the Gazette notification for the intended acquisition of the land was bad in law, null and void and of no effect?

(2) Was the Gazette notification for the intended acquisition of the land made contrary to Article 58 of the Johore Constitution?

(3) Was there infringement of the rules of natural justice thereby rendering the Gazette notification for the intended acquisition of the land *ultra vires* and void?

The first issue

It was argued that this issue was tied up with the question of whether the JSIEDC was legally established under the Enactment No: 1 of 1976. The legal status of JSIEDC in the context of the Competency Act was put under close scrutiny.

It was argued that the Legislature of the State of Johore was empowered under s. 3 of the Competency Act to make laws relating to the incorporation of certain persons and bodies. That section reads as follows:

> 3. It shall be within the power of the Legislature of a State, in relation to any matter specified in the First Schedule, to make laws with respect to the incorporation of any person or body within the State, and for such incidental and consequential matters in relation thereto (including the regulation and winding up of any person or body so incorporated) as the Legislature may deem necessary; and the Legislature may from time to time amend or repeal any such laws:
>
> Provided that with respect to the incorporation of any person or body within the State for the purpose of agricultural development or housing development or of development of urban or rural areas, the special provisions prescribed in the Second Schedule hereto shall have effect.

Section 7 of the Competency Act enacts that:

> "The Yang di-Pertuan Agong may by order add to or amend the First and Second Schedules." This was done when item 12 to the First Schedule to the Competency Act was added on 16 December 1974 and deemed to have come into force on 1 April 1974.

The First Schedule to the Competency Act contains the following items:

1. State Scholarships.
2. State Educational Endowments.
3. Charities and Charitable Institutions.
4. Incorporation of the State Secretary.
5. Incorporation of the Menteri Besar or Chief Minister.
6. The Development of Urban and Rural Areas.
7. Assistance to Padi Planters.
8. State Parks.
9. Museums and Public Libraries.
10. Sultanate Land.
11. Propagation of the teachings of Islam.
12. Economic and Social development of the Islamic community.
13. Agricultural Development.
14. Housing Development.
15. Water Supply.
16. Customary Lands.

For the purpose of this judgment, and for fear of repetition, it is pertinent to say that item 12 of the First Schedule to the Competency Act was added before Enactment No: 1 of the 1976 was passed by the State Legislature of Johore. As stated somewhere in this judgment the Gazette notification for the intended acquisition of the land in Form D was dated 8 July 1993.

Mr. Arthur Lee Meng Kwang, the learned Counsel for the plaintiff, argued and it was the meat of his contention that JSIEDC was illegally incorporated and that being the case it had no power to acquire the plaintiff's land. The result would be, so said Mr. Arthur Lee Meng Kwang, the obvious: the acquisition was bad in law, null and void and of no effect. Why must Mr. Arthur Lee Meng Kwang challenged the legality of JSIEDC? The answer lies in Form D itself where the purpose of the intended acquisition of the land was for the proposed joint venture development of the land at Kg. Tasek, Mukim Plentong by JSIEDC. It was JSIEDC that was keen to develop the land on a joint venture basis. That land, once upon a time, belonged to the plaintiff. If JSIEDC was illegally incorporated, the land cannot be legally acquired and it would revert back to the plaintiff. This was the submission of Mr. Arthur Lee Meng Kwang.

It was argued that the "birth" of JSIEDC under the Enactment No: 1 of 1976 did not comply with the provisions of the Competency Act particularly the special provisions as prescribed under the Second Schedule thereof. It was argued that there was nothing to show that:

(a) "arrangements shall have been made between the State and the Federal Government in relation to the establishment" of JSIEDC (see item 2 of the Second Schedule);

(b) the Enactment No: 1 of 1976 "shall provide for the corporation (referring to JSIEDC) to be subject to any direction of the Minister". (see item 3 of the Second Schedule);

(c) the Minister has appointed "three representatives of the Federal Government as members of the corporation (referring to JSIEDC)" (see item 5(1) of the Second Schedule).

Mr. Abdul Rashid bin Hj. Daud, the learned Senior Federal Counsel for the defendant, drew my attention to paras 16 and 17 of the affidavit in reply of Encik Kamarudin bin Abdullah in encl 16 and he argued that the Enactment No: 1 of 1976 is valid simply because it came into effect on 7 May 1976 after item 12 had been inserted to the First Schedule.

The legal status of JSIEDC exists by virtue of s. 3 of the Enactment No: 1 of 1976 which enacts that:

> There is hereby established a body corporate by the name of 'The Johore State Economic Development Corporation' (in this Enactment referred to as "The Corporation') with perpetual succession and a common seal and full power and

> authority under such corporate name to sue and to be sued and subject to and for the purposes of this enactment to enter into contracts and to acquire, purchase, take, hold and enjoy movable and Immovable property of every description and to convey, assign, surrender, yield-up, charge, mortgage, demise, re-assign, transfer and otherwise dispose of or deal with any movable or immovable property or any interest therein vested in the corporation on such terms as the corporation may deem fit.

Clearly from the tenor of s. 3 of the Enactment No: 1 of 1976, JSIEDC was established for a varied purpose among them would be the acquisition of immovable property. Section 18(1) of the Enactment No: 1 of 1976, imposes a duty on JSIEDC to, *inter alia,* undertake land development of the Muslim in the State of Johore and for convenience that section is reproduced hereinunder:

> 18(1) It shall be the duty of the corporation to promote, stimulate, facilitate and undertake land development and agricultural, residential, industrial, mining and commercial development for the purposes of economic development of the Muslim in the State of Johore.

It was sought to argue that the defendant did not deny that the provisions of the Second Schedule to the Competency Act have not been complied with and, consequently, the establishment of JSIEDC under the Enactment No: 1 of 1976 was said to be *ultra vires* and inconsistent with the Competency Act. An argument was advanced that any State law that is inconsistent with the Federal law, the Federal law shall prevail and the relevant State law shall, to the extent of the inconsistency, be void: Article 75 of the Federal Constitution. The question that requires determination is whether the Enactment No: 1 of 1976 which gives birth to JSIEDC is void as it conflicts with Article 75 of the Federal Constitution? The proviso to s. 3 of the Competency Act provides the answer to this crucial question. That proviso says that the special provisions prescribed in the Second Schedule shall have effect when the incorporation of any body within the State was for the purpose of agricultural development or housing development or of development of urban or rural areas. Now, since JSIEDC was established "to enter into contracts and to acquire, purchase, take, hold and enjoy movable and immovable property of every description and to convey, assign, surrender, yield-up, mortgage, demise, re-assign, transfer and otherwise dispose of or deal with any movable or immovable property or any interest therein" and not "for the purpose of agricultural development or housing development or of development of urban or rural areas", there was thus no necessity to comply with the proviso to s. 3 of the Competency Act. It must not be forgotten that the Legislature of the State of Johore had the necessary power to legislate the setting up of JSIEDC and credit should be accorded to the Legislature of the State of Johore who must have, by necessary implication, sufficient sense of responsibility to appreciate the rigours of s. 3 of the Competency Act particularly the proviso thereof.

Legislators are representatives of the electors who invest them with authority to legislate laws. The great concern of the Government of the day is to govern, and if in the course of its duties legislation became necessary, then it would be effected simply and quickly without any complications or formalities (see the works of Professor Plucknett in *Concise History* (5th Edn.) at page 322).

Though the question of the legality of JSIEDC was raised and amply set out in the affidavit of the plaintiff, yet there was an inherent defect to it. Since the plaintiff challenged the validity of the Enactment No: 1 of 1976 that was made by the Legislature of the State of Johore, leave of a Judge of the Federal Court must first be obtained before this Court entertains that challenge. Alas, there was nothing on record to show that leave had been obtained: Article 4 of the Federal Constitution. The crippling effect of the plaintiff's non-compliance with Article 4 of the Federal Constitution goes to the very root of what the plaintiff sought to argue, namely the legality of JSIEDC. Article 4 of the Federal Constitution as follows:

> 4(1) This constitution is the supreme law of the federation and any law passed after Merdeka day which is inconsistent with this constitution, shall to the extent of the inconsistency, be void.
>
> (2) The validity of any law shall not be questioned on the ground that -
>
> (a) it imposes restrictions on the right mentioned in Article 9(2) but does not relate to the matters mentioned therein; or
>
> (b) it imposes such restrictions as are mentioned in Article 10(2) but those restrictions were not deemed necessary or expedient by Parliament for the purpose mentioned in that Article.
>
> (3) The validity of any law made by Parliament or the legislature of any State shall not be questioned on the ground that it makes provision with respect to any matter with respect to which Parliament or, as the case may be, the legislature of the State has no power to make laws, except in proceedings for a declaration that the law is invalid on that ground or -
>
> (a) if the law was made by Parliament, in proceedings between the federation and one or more States;
>
> (b) if the law was made by the legislature of a State, in proceedings between the federation and that State.
>
> (4) Proceedings for a declaration that a law is invalid on the ground mentioned in Clause (3) (not being proceedings falling within paragraph (a) or (b) of the Clause) shall not be commenced without the leave of a Judge of the Federal Court; and the Federation shall be entitled to be a party to any such proceedings, and so shall any State that would or might be a party to proceedings brought for the same purpose under paragraph (a) or (b) of the Clause.

Here, as can be seen from the originating summons the State Government of Johore was not cited as a party even though the plaintiff knew that a challenge would be made as to the legality of the JSIEDC. The lackadaisical attitude of the plaintiff's Counsel must surely be the reason for this oversight.

Article 4 of the Federal Constitution came under scrutiny of the Borneo High Court in the case of *Stephen Kalong Ningkan v. Tun Abang Haji Openg & Tawi Sli* [1967] 1 MLJ 46 where the plaintiff there who, until dismissed by the Governor of Sarawak, was Chief Minister of Sarawak sought among other things to restrain Tawi Sli from acting as Chief Minister. Pike CJ (Borneo) who heard the case was of the view that certain paragraphs of the plaintiff's statement of claim in clear terms questioned the validity of an Act of Parliament on the ground that it made provision regarding a matter in respect of which Parliament had no power to make law. The plaintiff's answer to this was that if they did, they did so incidentally. To this Pike CJ (Borneo) had this to say:

> In my opinion article 4(3) and (4) of the Federal Constitution was designed to prevent the possibility of the validity of laws made by Parliament being questioned on the ground mentioned in article 4, incidentally. It was for this very reason that the article requires that such a law may only be questioned in proceedings for a declaration that the law is invalid. In other words, the subject must ask for a specific declaration of invalidity and may not, in my opinion, by seeking declarations of another, *albeit* perfectly proper, nature question the validity of such a law. In order further to secure that frivolous or vexatious proceedings for such declarations are not commenced, article 4 (4) requires that the leave of a Judge of the Federal Court must be obtained before the proceedings are commenced. Where a statute prescribes a particular mode of procedure that mode of procedure must be followed. See *Bull v. Attorney General for New South Wales* [1916] AC 564 and *East Midlands Gas Board v. Doncaster Corporation* [1953] 1 ALL ER 564.

Yet another example would be the case of *The City Council Of George Town & Anor. v. The Government of The State of Penang & Anor.* [1967] 1 MLJ 169 FC, where the petitioners there applied to the Federal Court for a declaration that the City Council of George Town (Transfer of Functions) Order, 1966 and the Municipal (Amendment) (Penang) Enactment 1966 were void by virtue of article 75 of the Constitution of Malaysia on the ground that they were inconsistent with the Local Government Elections Act, 1960, of the Federation. An application was made on behalf of the respondent for an order to dismiss the petition on the ground that the Federal Court has no jurisdiction in the matter and that the matter should be heard in the first instance before the High Court. It was held that the State Enactment and the Order made thereunder were clearly inconsistent with the Federal legislation and were therefore invalid and the Federal Court has jurisdiction to make an order so declaring to that effect. Ong Hook Thye FJ delivering the judgment of the Federal Court said:

Article 128(1)(a) gives the Federal Court exclusive jurisdiction to determine 'any question whether law made by Parliament or the Legislature of a State is invalid the ground that it makes provision with respect to a matter with respect to which Parliament or, as the case may be, the legislature of a State has no power to make laws.' Since State law is invalidated to the extent of any inconsistency therein with a Federal law, by article 75, notwithstanding even that the State law may be within the competency the State Legislature, the learned treasury solicitor's argument is manifestly absurd; so much so that consider it frivolous and vexatious enough to justify an order for costs were I not disallowed from doing so by the provisions of s. 47 of the Courts of Judicature Act, 1964.

My understanding of Article 4 of the Federal Constitution is this. A written law may be challenged as invalid on one of three grounds:

(1) in regard to both Federal and State written law, because it is inconsistent with the Constitution - article 4(1) of the Federal Constitution; or

(2) In regard to federal written law, simply because it is outside the competence of Parliament; and in regard to state written law, for the reason that it is outside the competence of the State Legislature - article 74(1) and (2) of the Federal Constitution; or

(3) in regard to state written law, it is because it runs counter to and is inconsistent with Federal law - article 75 of the Federal Constitution.

What is important important to note is that the power to declare invalid any law on subject to any restrictions in that it may be exercised by the Courts in any way.

Three observations must be made here. Firstly, Article 4 clause (3) Federal Constitution provides that the validity of any law made by Parliament or by the Legislature of any State shall not be questioned on the ground that it makes provision with respect to any matter with respect to which Parliament or, as the case may be, the Legislature of the State has no power to make laws, except:

(a) if the law was made by Parliament, in proceedings between the Federation and one or more States;

(b) if the law was made by a state legislature, in proceedings between the Federation and that State.

Secondly, Article 4 clause (4) of the Federal Constitution provides that proceedings for a declaration that a law is invalid on the ground mentioned in clause (3) shall not be commenced by an individual without the leave of a Judge of the Federal Court. Thirdly, Article 128 clause (1) of the Federal Constitution provides that only the Federal Court has jurisdiction to determine any question whether a law made by Parliament or by the Legislature of a State is invalid on the ground that it makes provision with respect to a matter to which Parliament or, as the case may be, the Legislature of the State has no power to make laws. In short, no other Court has.

Without the necessary leave of a Judge of the Federal Court, I have no jurisdiction to determine whether the Legislature of the State of Johore has the power to make the Enactment No: 1 of 1976 or not. In my judgment, without the leave of a Judge of the Federal Court the issue on the legality of JSIEDC must be relegated into oblivion and on this point alone the originating summons should be dismissed with costs. This case demonstrates the need of Counsel to be vigilant at all times, especially when preparing affidavits for use in Court. Preparing affidavits in haste will cause Counsels or more appropriately their clients to repent at leisure.

On the power of JSIEDC to acquire immovable property, reference may be made to s. 27 of the Enactment No: 1 of 1976 which enacts that:

> 27(1) When any immovable property, not being State land, is needed to be acquired by the Corporation for the purposes of this Enactment, such property may be acquired in accordance with the provisions of any written law relating to the acquisition of land for a public purpose for the time being in force in the State in which such property is situated, and any declaration required under any such written law that such land is so needed may be made notwithstanding that compensation is to be paid out of the Fund, and such declaration shall have effect as if it were a declaration that such land is needed for a public purpose in accordance with such written law.
>
> (2) The expenses and compensation in respect of any immovable property acquired by the Corporation under this section shall be paid by the Corporation.
>
> (3) When any immovable property has been acquired under this section the Corporation shall extract the necessary documents of title in respect of such property and shall pay any rent to which such property may be subject.

Acquisition of an immovable property by JSIEDC must necessarily be in tandem with s. 3 of the LAA which reads as follows:

> 3. The State Authority may acquire any land which is needed
>
> (a) for any public purpose;
>
> (b) by any person or corporation undertaking a work which In the opinion of the State Authority is of public utility; or
>
> (c) for the purpose of mining or for residential, agricultural, commercial or Industrial purposes.

An amendment to paragraph (b) to s. 3 of the LAA became effective on 13 September 1991 and that amendment widened the scope of paragraph (b). It reads as follows:

(b) by any person or corporation for any purpose which in the opinion of the State Authority is beneficial to the economic development of Malaysia or any part thereof or to the public generally or any class of the public; or

A novel argument was advanced to the effect that the whole of s. 27(1) of the Enactment No: 1 of 1976 was nullified as it was inconsistent with s. 3 of the LAA in that it purports to vest the power to JSIEDC to directly acquire private land for a public purpose which power is specifically reserved to the State Authority under s. 3 of the LAA and, consequently, it was submitted that it runs foul of Article 75 of the Federal Constitution.

Section 27(1) of the Enactment No: 1 of 1976 is almost akin to that of s. 19(1) of the Kelantan Foundation Enactment No: 1 of 1974 which provides that:

> When any immovable property, not being State land, is needed to be acquired by the Board for the purposes of this Enactment, such property may be acquired in accordance with the provisions of any written law relating to the acquisition of land for a public purpose for the time being in force in the State, and any declaration required by any such written law that such land is so needed may be made notwithstanding that compensation is to be paid by the Board; and such declaration shall have effect as if it were a declaration that such land is needed for a public purpose in accordance with such written law.

and Suffian LP in *Yeap Seok Pen v. Government of State of Kelantan* [1982] 2 MLJ 202 FC, had occasion to say, on the issue of whether the declaration in Form D where the property in that case was needed for the purpose of "ruang pejabat dan perniagaan Yayasan Kelantan" was valid particularly in reference to s. 19(1) of the Kelantan Foundation Enactment No: 1 of 1974, the following trenchant words:

> In view of the words after the semicolon in the above provision, we have no alternative but to hold that the declaration in G.N. 707 had effect as if it were a declaration that this property was needed for a public purpose in accordance with the Land Acquisition Act. Subsection (3) of s. 8 of the Act provides:
>
> A declaration in Form D shall be conclusive evidence that all the ... land referred to therein is needed for the purpose specified therein.
>
> We are therefore of the opinion that there is no merit in the appellant's contention on this issue.

Applying *Yeap Seok Pen's* case to the facts of the present case, the Gazette notification in Form D dated 8 July 1993 which described the purpose of the intended acquisition of the land as the "proposed joint venture development of the land by JSIEDC" must be construed as conclusive evidence that the land was needed for the purpose stated therein. In the same vein and a few years earlier the Privy Council in *Syed Omar bin Abdul Rahman Taha Alsagoff & Anor. v. The Government of the State of Johore* [1979] 1 MLJ 49 in dismissing the appeal held that s. 8(3) of the LAA provides that the declaration

issued under the section shall be conclusive evidence that all the scheduled land is needed for the purpose specified therein namely for "the purpose of building a hockey stadium". Viscount Dilhorne delivering the judgment of the Board had this to say:

> Section 8(3), as has been said, provides that the declaration shall be conclusive evidence that all scheduled land is needed for the purpose specified therein. While it may be possible to treat a declaration made pursuant to this subsection as a nullity if it be shown that the acquiring authority has misconstrued its statutory powers (see *Anisminic v. Foreign Compensation Commission* [1969] 2 AC 147) or that the purpose stated in the declaration does not come within s. 3, in the absence of bad faith, which in the instant case is negatived by concurrent findings of fact in the Courts below, this subsection renders it not possible to challenge its validity by asserting that some of the land to which it relates is not needed for the purposes stated or that the land is in fact wanted for purposes other than those specified.

It is germane to note that the judgment of Viscount Dilhorne seems to reaffirm in no small ways *Wijeyesekera v. Festing* AIR [1919] PC 155 and *SMT Somavanti & Ors. v. The State of Punjab & Ors.* [1963] 2 SCR 774 on the subject of the government declaration of public purpose. It is also interesting to note that *Yeap Seok Pen's* case considered *Syed Omar Alsagoff's* case.

The late Arulanandom J in *Yew Lean Finance Development (M) Sdn Bhd v. Director of Lands & Mines Penang* [1977] 2 MLJ 45 described the impact of s. 8(3) of the LAA in these words:

> It is therefore quite clear that once a Gazette notification under s. 8 is given it is conclusively established that the lands are needed for the purpose stated. The only complaint the owners of acquired lands can have will be if the provisions of the Act have not been complied with. Furthermore, if the compensation awarded then is not adequate they have a right of appeal to the High Court. Apart from that, the question of acquisition cannot be gone into.

On what is the proper approach to construe s. 3 of the LAA, the late Arulanandom J in *Yew Lean Finance Development (M) Sdn. Bhd. v. Director of Lands & Mines Penang (supra)* had this to say:

> Therefore in this case the State Authority need not confine its acquisition of land for purposes which come under one head only, i.e, either under s. 3(a), 3(b) or 3(c). They may use either head individually or may combine one or two of them as the case may be. Not to allow the interpretation of "or" as capable of meaning "and" would lead to an absurd construction of the section. Furthermore to read "and" for "or" in s. 3 of the Act would again lead to absurdity because it would mean that the State Authority would only be able to acquire land if all these limbs of s. 3 were satisfied. The only intelligent reading of s. 3 would be to give the State Authority right either to acquire land under one limb, of s. 3(a), (b) or even part of the limb of s. 3(c), or to combine more than one of these purposes at the time of the acquisition.

Reverting back to the question whether s. 27 (1) of the Enactment No: 1 of 1976 is inconsistent with s. 3 of the LAA, on the authority of *Yeap Seok Pen's* case, I ruled that these two sections complement one another as it was the State Authority that acquired the land on behalf of JSIEDC and in the opinion of the State Authority that acquisition was beneficial to the economic development of Malaysia particularly JSIEDC and it may even be confined to any class of the public. By necessary inference the words "any class of the public" appearing in s. 3(b) of the LAA may be extended to the "economic and social development of the muslim community" as envisaged in item 12 of the First Schedule of the Competency Act.

Next, it was argued that specific words were not employed to show the purpose of the intended acquisition as envisaged in ss. 3(a) or 3(b) or 3(c) of the LAA. It was said that the words "cadangan usahasama membangunkan tanah di Kg. Tasek, Mk. Plentong oleh JSIEDC" were not descriptive of anyone or more of the specific purposes spelt out in ss. 3 (a) or 3(b) or 3(c) of the LAA and this was said to be fatal. Reliance was placed in the Alor Setar High Court Saman Pemula No: 24-28-94 (the *Kerpan's* case) where the High Court there was said to have declared null and void the State Government's acquisition of two plots of land belonging to two landowners for the development of a tiger prawn integrated farming project for the following reasons:

(1) that the declaration under the LAA was defective as it did not provide for a specific purpose;

(2) that the declaration was not conclusive evidence that the land was needed for the purpose specific;

(3) that the declaration was defective as it was not clear that the acquisition was for a public purpose and, consequently, it was said that declaration was fatal and incurable.

I was asked to follow the *Kerpan's* case and to strike down the declaration in Form D in the present case as null and void and of no effect. Unfortunately, I was not shown the written judgment of the High Court in Alor Setar in regard to the *Kerpan's* case and being a Court of concurrent jurisdiction, I declined to follow the *Kerpan's* case. In my judgment, the Gazette notification in Form D which described the purpose of the intended acquisition of the land as stated earlier was sufficiently worded and squarely fall within the ambit of s. 3(b) of the LAA. That JSIEDC could enter into a joint venture development of the land can never be doubted (see ss. 18 and 19 of the Enactment No: 1 of 1976).

Next, it was argued that there was a failure on the part of the State Authority to identify the joint venture partners of JSIEDC and such failure was said to be fatal and incurable. The short answer would be that there is no requirement under s. 3 of the LAA that the State Authority must supply details of the

joint venture development proposed by JSIEDC to the plaintiff. This is the law pure and simple and there is no need to read words into s. 3 of the LAA. It is an elementary rule of construction that the phrases and sentences are to be construed according to the rules of grammar. As Bayley J said in *R v. Ramsgate (Inhabitants)* [1827] 6 B & C 712 especially at p. 715:

> It is very desirable in all cases to adhere to the words of an Act of Parliament, giving to them that sense which is their natural import in the order in which they are placed.

Consequently, if there is nothing to modify, alter or qualify the language which the statute contains, it must be construed in the ordinary and natural meaning of the words and sentences: *Attorney-General v. Mutual Tontine Westminster Chambers Association Ltd.* [1876] 1 EX. D 469, per Jessel MR; *Bradlaugh v. Clarke* [1883] 8 App. Cas. 354 per *Lord Fitzgerald; Re No: 12 Regent Street, Oxford* [1948] Ch. 735. Thus construing s. 3 of the LAA in its ordinary and natural meaning there was no necessity for the State Authority to advance the details of the joint venture development proposed by JSIEDC to the plaintiff.

It was also argued that the failure of the State Authority to particularise the joint venture partners of JSIEDC deprived the plaintiff of his right to raise the issue of *mala fide*. There was nothing on record to prevent the plaintiff from raising this issue. It seems to me that this issue was raised as an after thought in a last minute attempt to question the legality of the acquisition.

The second and third Issues

I will now consider these two issues together as they are inter - related to one another.

Article 58 of the Johore Constitution provides that:

> All the laws and customs of the country shall be carried out and exercised with justice and fairness by all the Courts of Justice and by all officers and servants of the State between all the people of the country and the aliens who sojourn and reside under its protection, whether for a season or for a lengthened period, that is to say, without their entertaining in the least degree more sympathy or regard or partiality towards those who profess the religion of the country, namely the Muslim Religion, or making any difference between those who are the subject of the State and those who are not.

It was impressed upon me that this particular provision of the Johore Constitution is unique in that it is not found in any other State Constitution and it requires not only the Courts to act with justice and fairness but its officers and servants too were sufficiently required to act with justice and fairness in implementing the laws and customs of the State of Johore. Flowing from this, it was argued that the decision making process of the State Authority must show that the decision to acquire the land was made with justice and fairness. This was said to be done if and only if the rules of natural justice was adhered to.

It was said that the Menteri Besar of Johore as the chairman of the Executive Committee (Majlis Mesyuarat Kerajaan) should not be appointed as the chairman of JSIEDC. This argument was akin to the one that was raised in *Lim Cho Hock v. Government of the State of Perak & Ors. (supra)*. As I said in the early part of this judgment, the duality of the Menteri Besar's position could be avoided, if the need arises, by invoking the aid of s. 10 of the Enactment No: 1 of 1976. This argument therefore fails. Next, it was argued that JSIEDC should have disclosed the identity of the joint venture partners of JSIEDC to the plaintiff. Again, as I said somewhere in this judgment, there was no such requirement under the LAA. Finally, it was argued that the plaintiff should have been accorded the right to be heard before the Executive Committee (Majlis Mesyuarat Kerajaan) before the decision to acquire the land was made. This was indeed a far fetched idea. The Government machinery would come to a standstill if all landowners are accorded the right to be heard before the Executive Committee (Majlis Mesyuarat Kerajaan) before decisions to acquire were made. There are provisions in the LAA, particularly ss. 10 to 17, that will ensure that the landowners be given the right to be heard before awards are made by the Land Administrators. Broomfield J in Assistant Development Officer, *Trombay v. Tayaballi Allibhoy Bohori* AIR [1933] Bom. 361 said that:

> The acquiring officer's award is of course strictly speaking not an award at all but an offer. It is based on inquiry and inspection and the officer responsible for it is usually a man of experience and local knowledge. He may take evidence, but he is not bound to do so, and his proceedings are administrative rather than judicial. But if his award is not accepted and the matter is taken into Court, the proceedings are thenceforward judicial in character. The party claiming enhanced compensation is more or less in the position of a plaintiff and must produce evidence to show that the award is inadequate. If he has no evidence the award must stand, and if he succeeds in showing *prima facie* that the award is inadequate, then Government must support the award by producing evidence. It is no doubt true that the valuation of immovable property is not an exact science.

The plaintiff here as the registered proprietor of the land should not be unduly worried. The acquisition Courts will give him a good dose of justice and fairness as spelt out in Article 58 of the Johore Constitution. As Abbot J said in *Er Boon Yan & Ors. v. The Collector of Land Revenue, Port Dickson* [1955] 21 MLJ 134:

> ... I feel that it could never be a correct procedure to compensate persons, whose lands have been compulsorily acquired, by offering them substantially less than what they have paid for the land - particularly in this present case where the land had been bought by the applicants so shortly before the acquisition took place. It could never be a sound proposition that a man dispossessed of his property could be required to make a financial sacrifice except he was willing to do so.

Article 13(2) of the Federal Constitution affords sufficient protection to the plaintiff. It says that:

> No law shall provide for the compulsory acquisition or use of property without adequate compensation.

But of course what is adequate compensation is entirely up to the Court to decide. Section 68A of the LAA gives an added boost to JSIEDC and this must be the worrying provision for the plaintiff. But this Court and any other acquisition Courts have no choice but to give effect to it. It is the will of Parliament. That section reads as follows:

> Where any land has been acquired under this Act, whether before or after the commencement of this section, no subsequent disposal or use of, or dealing with, the land, whether by the State Authority or by the Government, person or corporation on whose behalf the land was acquired, shall invalidate the acquisition of the land.

It is germane to mention that the Federal Court in *S Kulasingam & Anor. v. Commissioner of Lands, Federal Territory & Ors.* [1982] 1 MLJ 204, was of the view that since the LAA has an express provision for an inquiry and hearing in respect of the quantum of compensation payable, but none with regard to the acquisition of land needed for the purposes specified in s. 3 of the LAA, this would attract the application of the maxim *expressio unius est exclusio alterius* to exclude natural justice. It was on this basis, that the Federal Court excluded the right of hearing being implied in the LAA under Article 13(1) of the Federal Constitution even though the Federal Court was prepared to read the word **"laws"** specified therein in a broad sense as "a system of law which incorporates those fundamental rules of natural justice that had formed part and parcel of the common law of England that was in operation at the commencement of the Constitution". The Federal Court further held that "the legislature can by clear words exclude the principles of natural justice in the absence of specific constitutional guarantees". I am bound by the decision of the Federal Court in *Kulasingam* and I ruled that there was no need for a pre-acquisition hearing before the Executive Committee (Majlis Mesyuarat Kerajaan). The *audi alteram partem* rule should not apply before the Executive Committee (Majlis Mesyuarat Kerajaan) decided to acquire the plaintiff's land.

I am acutely aware of the observations of Raja Azlan Shah Ag CJ (Malaya) (as His Majesty then was) in *Pengarah Tanah dan Galian, Wilayah Persekutuan v. Sri Lempah Enterprise Sdn. Bhd* [1979] 1 MLJ 135 at p. 148 to the effect that:

> Unfettered discretion is a contradiction in terms ... It does not seem to be realized that this argument is fallacious. Every legal power must have legal limits, otherwise there is dictatorship ... In other words, every discretion cannot be free from legal restraints; where it is wrongly exercised, it becomes the duty of the Courts to intervene. The Courts are the only defence of the liberty of the subject against departmental aggression.

But with respect, the question to ask is this: Can there be a "departmental aggression" when s. 3 of the LAA is silent in regard to pre-acquisition inquiry before the Executive Committee (Majlis Mesyuarat Kerajaan)? The answer would surely be in the negative. It is instructive to note that under s. 3(b) of the LAA, land may be acquired for a person or a corporation and not by the government for itself, and for a purpose which "in the opinion" of the State Authority to be beneficial to the economic development of Malaysia or any part thereof or to the public generally or any class thereof. The words "economic development" have not been defined. Whether the acquisition is beneficial and for the "economic development" are best left to the subjective discretion of the State Authority. A broad all encompassing meaning should be given to the words "economic development" and, consequently, the joint venture development of the land by JSIEDC that will definitely reap profit will, in my judgment, fall squarely within the scope and ambit of the words "economic development".

One must not forget that the right to property is never absolute. It can be whittled down by the provisions of the LAA as demonstrated in this judgment. For the aforesaid reasons, encl 2 was dismissed forthwith with costs.

Reported by W.A. Sharif